

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9040 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : YES

AARTIBEN G PATEL

Versus

STATE OF GUJARAT

Appearance:

Mr.B.P.Tanna with Ms.Kerawala for
TANNA ASSOCIATES for Petitioners
Mr.P.G.Desai, learned G.P. and Mr.V.B.Gharania,
learned A.G.P. for respondents Nos.1 and 2.
Mr.H.S.Munshaw for respondent No.3.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. Recruitment was held for making appointments on the post of Vidhya Sahayaks in October 1998 for District Banaskantha in pursuance to the advertisement, which had been issued on 25.6.98 and 2.7.98. This recruitment was intended for 1492 Vidhya Sahayaks. Select list was prepared on the basis of the marks obtained in S.S.C. as well as P.T.C. and other courses. After the recruitment was held and the Vidhya Sahayaks were to be appointed and when the question came up with regard to their postings, the Director of Primary Education held a Camp at Palanpur

from 6.11.98 to 12.11.98. According to respondent No.3 at that time it was decided not to fill up any vacancy in the cadre of Primary School Teachers through the selected Vidhya Sahayaks so far as Talukas, namely, Palanpur, Vadgam and Danta in Banaskantha District are concerned, as there were shortage of teachers in other backward and interior Talukas like Deodhar, Vav, Tharad, Kankrej etc. as they are Boarder Talukas as well as under developed and backward. The vacancies available in these three Talukas had not been notified for the aforesaid Camp and the candidates were asked to select the villages and places of their choice in Talukas other than Palanpur, Vadgam and Danta and the postings were given in the other Talukas, which had been duly notified for the aforesaid Camp. Number of candidates approached the authorities for their posting in these three Talukas i.e. Palanpur, Vadgam and Danta for different reasons and accordingly 124 postings were given in these three Talukas also. Later on the Director of Primary Education of the State of Gujarat issued instructions to cancel the said postings as the same were contrary to the guidelines and decision taken by the District Panchayat itself. Immediate action was, therefore, taken by the respondent No.3 herein cancelling the said posting orders and posting the said 124 Vidhya Sahayaks in other Talukas.

2. Against the postings made in these three Talukas, seven petitions being Special Civil Applications Nos.2503, 2108, 2301, 2304, 2388, 2591 and 2116 of 1999 were filed before this Court and all these seven Petitions were decided by a common judgment and order dated 11.10.99 passed by this Court (Coram: Rajesh Balia, J). Subject matter of the dispute in those petitions was that the posting to certain Vidhya Sahayaks had been given at places in these three Talukas, although the same had not been notified for the camp. This Court while considering the seven petitions, as aforesaid, found that the postings in three places i.e. in Talukas Vadgam, Danta and Palanpur had been made without considering the merit list of the candidates of the very same selection for such postings in these Talukas and thus the order of preference envisaged under the Scheme of Appointment of Vidhya Sahayaks was defeated. Whereas the Vidhya Sahayaks after the appointment and posting are not liable to be transferred until absorbed regularly as Primary Education Teachers, no Scheme could be operated in violation of the Constitutional mandate of equal treatment at the hands of the State, the Court issued directions as under:-

"I, therefore, dispose of these petitions by

directing the respondents not to cancel the appointments of the petitioners and disturb them from the present place of posting until the exercise of inviting options from all the selected candidates of Oct.1998 and considering their postings in accordance with the preference envisaged under scheme is made by the respondents, as per the procedure laid down in the scheme and all concerned are given an opportunity to be considered as per their options. If according to them any person is liable to be shifted from the present place of posting, the same may be carried out by a simple order of posting by transfer and not by issuing afresh appointment orders. The entire exercise shall be carried out within period of three months from today. There shall be no order as to costs."

3. On behalf of the petitioners herein, 117 in number, the grievance has been raised that while giving appointments now after this Court's decision dated 11.10.99, the places in three Talukas have been kept out of consideration and the postings have been given only in Talukas other than the aforesaid three Talukas and stress has been laid that according to the decision of this Court dated 11.10.99, the three Talukas should also have been included. The present petition was filed in this Court on 18.11.99 with the prayers as under:-

- (a) by declaring that the whole exercise conducted by the respondent authorities that is giving notices for attending the camp for choosing the place of their choice on 29-10-1999, conducting such camp on 29-10-99 and thereafter issuing orders dated 4-11-1999 is arbitrary, illegal, bad in law and is in direct contravention of order dated 11-10-1999 passed by this Hon'ble Court at Annexure A;
- (b) Be pleased to quash and set aside the whole exercise conducted by the respondents authorities;
- (c) During pendency and final disposal of this petition, Your Lordships be pleased to direct the respondent authorities, their agents and servants not to in any way implement the order dated 4-11-1999 in case of all petitioners;
- (c) to award exemplary costs of this petition to the

petitioners;

(d) to pass such other orders as may be just and necessary in the circumstances of the case."

4. Learned counsel for the petitioners has stressed that the exclusion of the places of these three Talukas is contrary to the direction given by this Court on 11.10.99 and that the manner in which the exercise has been undertaken by the respondents after this Court's order dated 11.10.99, on 29.10.99 and the issue of the orders on 4.11.99 defeats and thwarts the very purpose of the preference of the place of posting based on merit. In response to the Rule issued by this court, an affidavit in - reply dated 24.11.99 has been filed by the Director of Primary Education and an affidavit -in reply has also been filed on 24.11.99 by the District Primary Education Officer. In Para 6 of the affidavit-in-reply by the respondent No.3, it has been stated that out of 117 petitioners, who have approached this Court, 5 petitioners have already resigned and are not in the service and they are at Sr.Nos.30, 32, 52, 96 and 99 in the title of the petition and that the name of one of the petitioners, namely, Hansaben Desai has been repeated. It has also been then submitted in Para 7 that in all 33 Vidhya Sahayaks, who are before this Court, had attended the Camp and given in writing the places of their choice and posting and the list of 33 petitioners has been annexed as Annexure 'F' with the said reply. It has been averred that 83 petitioners are holding postings in Vadgam, Palanpur and Danta Talukas and they are required to be shifted to other Talukas as no posts are to be filled up in these three Talukas while 30 Vidhya Sahayaks are holding the posts in Talukas, namely, Dhanera, Tharad, Deodhar, Kankrej and Deesa and they are not required to be posted in these three Talukas, namely, Vadgam, Danta and Palanpur. The case of the respondents is that fresh applications were invited and postings were given on merit. In para 10 it has been stated that at present 2061 posts are vacant in District of Banaskantha and as per the permission granted by respondent No.2 fresh advertisement is also published for inviting application for filling up 1292 posts and after following due procedure, a select list is also prepared and a Camp is to be held on 1.12.99 for giving posting orders, that out of 10253 posts, more than 2000 posts i.e. 20% of the strength are vacant and it is necessary to get the same filled up in the interest of education of the students, that State Government is giving utmost importance and priority to the education in the Primary Schools and accordingly prompt permission is granted to fill up 700 posts and that another advertisement is to be issued for

filling up the vacancies in the interior and rural areas. At present the entire concentration is on filling up the vacancies of backward and interior areas except Vadgam, Danta and Palanpur Talukas so that the Schools can be run with the required capacity and education would not suffer. It has been further submitted that as far as Banaskantha District is concerned, the literacy rate is the lowest in the State of Gujarat, even less than the District of Dang and, therefore, the State Government is giving top priority to bring up the literacy rate in the District of Banaskantha.

5. The Director of Primary Education in his affidavit-in-reply has taken the stand in para 17 that these three Talukas, namely, Palanpur, Vadgam and Danta were kept reserved for teachers to be transferred from remote areas to District areas and no other Vidhya Sahayaks are going to be transferred, that no Vidhya Sahayaks are to be transferred from and posted in these three Talukas. In Para 18 of the reply, it has been stated that in view of the policy decision taken by the State Government that where 8 or more than 8 teachers are already working, 1 post out of every 8 can be kept vacant and accordingly vacancies were kept in some of the Talukas. It has also been averred in Para 24 of this reply that 26000 candidates have already been appointed and at present they are working and imparting education in the Schools.

6. I have considered the pleadings in its entirety and have also gone through the document of policy decision in this regard as was produced for the perusal of the Court in a Printed Booklet on behalf of the respondents as also the Resolution dated 8.4.99 and this Court's earlier decision dated 11.10.99. So far as the argument raised on behalf of the learned counsel for the petitioners that the three Talukas, namely, Vadgam, Danta and Palanpur ought to have been included when the exercise was undertaken by the respondents after this Court's order dated 11.10.99 is concerned, I find that whether these three Talukas should be included while giving postings or not was not a direct question which was under consideration before the Court. The question, which was for consideration of the Court, was that the orders, which had been issued by giving appointments in these three Talukas, without giving opportunity to all the candidates, who had become available on the basis of the same selection while giving postings in these three Talukas, as had been revised under the direction of the Government, were correct or not. Ofcourse, the discussion in the order includes the mention of these

three Talukas but the Court found that at the time when the appointments were given in the first instance, these three Talukas were not included. Further, when the grievance was raised by some of the persons after joining at their respective place of posting that they should be given posting at certain places in these three Talukas, the postings were given at these places and their request to the exclusion of the other candidates, who too could have availed opportunity of giving out their place of choice, was entertained. Finding that the similarly situated candidates had been dealt with in a discriminatory manner and there has been a violation of the right of equality amongst candidates, who had been selected in the same selection, the Government had taken a decision to revise these orders and accordingly the orders were passed. Now this has come in the order dated 11.10.99 by way of narration of facts and by way of discussion of the case of the parties. The Court has not issued any mandamus that the postings can be given only after inclusion of these places in these three Talukas. The Court has disposed of seven petitions by directing the respondents not to cancel the appointment of the petitioners and disturb them from the present posting until the exercise of inviting options from all the candidates of October 1998 and considering their postings in accordance with the preference envisaged under the Scheme and all concerned are given an opportunity to be considered as per their option and in case according to them any person is required to be shifted from the present place of posting, the same can be carried out by simple order of transfer and not by issuing fresh appointment order. It is, therefore, clear that there was no positive direction by Court that places in these three Talukas must be included while taking up the exercise in pursuance of this Court's order. In matters of this nature, it is open for the Government to take the decision in accordance with the policy, which has been laid down in this regard. Had it been the view of the Court that places in these three Talukas must be included, the Court would have certainly set aside the orders, which had been passed on the direction of the Government, but instead of quashing those orders, the Court kept the direction confined i.e. till the exercise is taken up, the petitioners shall not be disturbed. Such a direction can not be read to mean that the places in these three Talukas should have been included. Even otherwise, the respondents have come with the case that there are teachers, who have been working in remote rural areas and their request for their posting is pending and now that the Vidhya Sahayaks had been selected and the Government Policy is to fill up the vacancy from teachers

in remote areas and, therefore, Vidhya Sahayaks are not being posted and the places in these three Talukas have been kept for consideration of these teachers, who have already remained in far flung rural places for quite some time and it has been given out by learned A.G.P. that at present 1407 applications are pending with them for the purpose of such postings whereas they are having 335 vacancies in these three Talukas. In such cases, when the Government has to simply decide the question of posting, in the opinion of this Court, it is not at all desirable or warranted to interfere with such decision in the matter of postings unless there is any violation of the rights of equality within the meaning of Articles 14 and 16 of the Constitution of India. It is definitely open to respondents to choose in order to fill up the places in certain Talukas by new teachers or by new appointments in case they find that places are nearer to them or those places be kept for those teachers, who have already suffered a longer span of time. It is certainly a policy decision and the orders have been passed accordingly in pursuance of such decision. The posting at any particular place cannot be claimed as a matter of right by any appointee. In the present case policy was declared that the postings will be made on the basis of preference according to merit but that does not mean that each and every vacancy for that purpose must be made available. If the decision is taken that this preference is to be divided and must expand only to certain Talukas in a given District and the places and certain Talukas must be left for transfer of the existing teachers, whose requests are pending, it is certainly a part of administration. Such administrative decision, which do not effect the right of a person, cannot be said to be violative of Articles 14 and 16 of the Constitution of India. In case preference based on merit is flouted with regard to those places with the vacancies available at the places, which are made open for such postings, then and then only it can be said that it is a case of violation of the right of equality. In the opinion of this Court, the grievance, which has been raised in this petition, cannot be said to be a legitimate grievance. After all it is not a question of denial of consideration for appointment as such. It is only a case of the place where the selected candidate has to discharge his duties and for that purpose, in the opinion of this Court, there is no enforceable right and this court does not find that by not mentioning the places in these three Talukas to be available, the policy of posting with reference to 'preference' and merit has been defeated. It has only been confined to places in certain Talukas for administrative reasons and hence there is no element of

discrimination. Such policy decision may cause hardship in certain cases, but such hardship, if at all it is hardship, it has to be borne by the candidates, who are selected because it is only a question with regard to posting and does not affect the right of equality of employment as enshrined in Article 14 of the Constitution of India, and they have to rest contented with the appointment and the place of posting which is made available to them.

7. This Court does not find any merit in this Special Civil Application. The same is hereby dismissed. Rule is hereby discharged. No order as to costs.